



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 2

290 BROADWAY

NEW YORK, NY 10007-1866

**MAY - 5 2016**

**CERTIFIED MAIL-RETURN RECEIPT REQUESTED**

Article number: 7015 3010 0001 6837 8118

John Maragliano, III  
Vice President  
American Shoring Inc.  
207 Lake Street (Route 32)  
Newburgh, NY 12550

Re: **NOTICE OF VIOLATION**  
**RCRA § 3007 Information Request**  
**American Shoring, Inc. - EPA ID No. NYN 008 028 391**

Dear Mr. Maragliano:

The U.S. Environmental Protection Agency (EPA) is charged with the protection of human health and the environment under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6901 *et seq.*

Pursuant to RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), the EPA promulgated rules, regulations, and standards governing the handling and management of hazardous waste as set forth in 40 C.F.R. Parts 260-272. For the purposes of this Information Request and Notice of Violation, the hazardous waste regulations governing the generation of hazardous waste were promulgated in 1980 and amended by HSWA in 1984.

The State of New York is authorized by the EPA to conduct a hazardous waste program under Section 3006 of RCRA, 42 U.S.C. § 6926 and is authorized to enforce RCRA. The EPA has retained its authority to enforce the hazardous waste rules and regulations in the State of New York.

The Notice of Violation (NOV) portion of this letter (see Enclosure I) is issued pursuant to Section 3008 of the Solid Waste Disposal Act, as amended by RCRA and HSWA, 42 U.S.C. §§ 6901, 6928. Issuance of this NOV and compliance with its terms does not preclude EPA from taking formal enforcement action against you and/or your company, including a monetary penalty, under Section 3008 of RCRA, 42 U.S.C. § 6928, or any other applicable regulation or statute.

Pursuant to the provisions of Section 3007 of RCRA, 42 U.S.C. § 6927, EPA may require parties who handle or have handled hazardous waste to provide information relating to such wastes. Pursuant to the statutory provisions cited above, EPA hereby requires that you provide the information requested in Enclosure II, using the instructions and definitions included in

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
MAY 6 2010

Enclosure III. This information is necessary to determine the compliance status of American Shoring Inc. located at 207 Lake Street (Route 32) in Newburgh, New York 12550.

Please provide the information requested no later than thirty (30) calendar days from receipt of this letter. Requests for additional time must be justified. Requests for additional time must be made within ten (10) calendar days of receipt of this letter. The response must be signed by a responsible official or agent of your company, using the form in Enclosure IV to this letter.

The response to the request in the Enclosure must be mailed to the following address:

Mr. Ronald Voelkel  
Environmental Scientist  
RCRA Compliance Branch  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency- Region 2  
290 Broadway, 21st Floor  
New York, NY 10007-1866

You may, if you so desire, assert a business confidentiality claim covering all or part of the information herein requested. The claim may be asserted by placing on (or attaching to) the information at the time it is submitted, a cover sheet, stamped or typed with the legend, or other suitable form of notice, such as "trade secret," "proprietary," or "company confidential". The claim should set forth the information requested in 40 Code of Federal Regulations (40 C.F.R.) Section 2.204(e)(4). Information covered by such a claim will be disclosed by EPA only to the extent permitted by, and by means of procedures set forth in, 40 C.F.R. Part 2. EPA will review the information to determine the extent of confidentiality of the information, and may, at its discretion, challenge the confidentiality claim pursuant to the procedures set forth at 40 C.F.R. Part 2. If no such claim accompanies the information when it is received by EPA, it may be made available to the public by EPA without further notice to you.

Failure to respond to this letter truthfully, accurately, and in full within the time provided may subject you to sanction authorized by federal law including, but not limited to, a potential enforcement action pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928. Such enforcement action may include the assessment of a monetary penalty up to \$ 37,500 per day per violation. Please also note that all information you provide may be used in an administrative, civil judicial or criminal action.

This information request is not subject to the requirements of the Paperwork Reduction Act (PRA), as amended, 44 U.S.C. Part 3501 et seq.

For consistency, please provide your answers in a format which is keyed to the sections as outlined in Enclosure III to this letter.

If you have any questions regarding this matter, please contact Mr. Ronald Voelkel at (212) 637-1470 or [voelkel.ronald@epa.gov](mailto:voelkel.ronald@epa.gov).

Sincerely yours,



*sm* Leonard Voo, Chief  
RCRA Compliance Branch  
Division of Enforcement and Compliance Assistance

Encl: Enclosure I	Notice of Violation
Enclosure II	Information Request
Enclosure III	Instructions & Definitions
Enclosure IV	Certification of Answers

cc: Mr. Joseph A. Catania, Jr., Esq.  
Catania, Mahon, Milligram & Rider, PLLC  
703 Route 9, Suite 5  
Fishkill, NY 12524

Kelly Lewandowski, Chief  
Site Control Section  
New York State Department of Environmental Conservation  
625 Broadway, 11th Floor  
Albany, NY 12233-7020

## ENCLOSURE I

### NOTICE OF VIOLATION

American Shoring, Inc.

EPA ID No. NYN 008 028 391

On or about March 16, 2016, a duly authorized representative of the U.S. Environmental Protection Agency (EPA) conducted a RCRA compliance evaluation inspection ("inspection") of American Shoring, Inc. located at 207 Lake Street (Route 32) in Newburgh, New York. The objective of the inspection was to determine whether or not American Shoring was in compliance with all regulations pertaining to the generation, management, and disposal of hazardous waste.

At the time of the inspection, American Shoring Inc. was found to be in violation of the following RCRA regulations:

1. Failure to make a determination as to whether or not a solid waste is a hazardous waste, in violation of 6 NYCRR § 372.2(a)(2).
2. Failure to maintain and operate the facility to minimize the possibility of a fire, exposure, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents in violation of 6 NYCRR § 373-3.3(b).
3. Failure to keep containers holding hazardous waste in good condition and failure to transfer hazardous waste from a leaking container to a container that is in good condition, in violation of 6 NYCRR § 373-3.9(b).
4. Failure to keep containers holding hazardous waste closed except when necessary to add or remove waste, in violation of 6 NYCRR § 373-3.9 (d)(1).
5. Failure to mark containers holding hazardous waste with the words "Hazardous Waste" and with other words identifying their contents, in violation of 6 NYCRR § 373-2.9(d)(3).

At the time of the inspection, approximately twenty five (25) containers of waste paints and other wastes were stacked outdoors next to the paint trailer. Most of these containers were unlabeled or corroded; at least one was open and one showed evidence of having been breached; one 5-gallon container was labeled in yellow with the word "Flammable Liquid" and another container was labeled "Supers SAE 32" oil. You stated at the time that you "got to dispose of them" and "got to get someone to take them all away". In addition, two 5-gallon containers of enamel paint waste, one without a lid and which had rain water and debris sitting on top of the nearly full container of paint, were located near the paint trailer. Another 5-gallon container, which was red, unlabeled and filled with an unknown substance was located near the stack of paint wastes and next to a small dumpster that held paint and paint thinner containers, paint and solvent soaked rags, and other wastes from painting operations. It was observed that at least one of the containers of paint placed in the dumpster was not completely empty. The red unlabeled 5-gallon container had rain water and a slick, viscous fluid, which separated like oil and water, sitting on its lid; you stated that this container might contain waste lubricants. Also, an unlabeled 5-gallon container which was filled with an unknown substance, and an automobile battery, were observed in the 800 gallon diesel storage tank secondary containment structure; you stated that the 5-gallon container

might contain used "hydraulic oil". None of the containers of waste were labeled with the words "hazardous waste", and most were not labeled to indicate their content.

In addition, in various areas of the rear lot of your facility, evidence of multiple paint spillages on the ground, including over the embankment of Quassaick Creek, were observed. Given these conditions, and the open, corroded, and an apparently breached container, of paint and unknown wastes stored outdoors, constitutes failure to minimize the possibility of release of hazardous waste.

In order to be exempt from small quantity generator requirements, a facility must make hazardous waste determinations of all of its solid wastes and must manage its hazardous waste properly. Given that your facility failed to make any hazardous waste determinations and failed to properly manage any of its hazardous waste, your facility was not exempt from Small Quantity Generator requirements. Therefore, at the time of the inspection, American Shoring Inc. was found to be in violation of the following small quantity generator requirements:

6. Failure to clearly mark on each container the date upon which each period of accumulation began, in violation of 6 NYCRR § 372.2(a)(8)(iii)(d), § 373-1.1(d)(1)(iii)(c)(2).
7. Failure to inspect, at least weekly, area where containers are stored, looking for leaking containers and for deterioration of containers and the containment system caused by corrosion and other factors in violation of 6 NYCRR § 373-3.9(e).
8. Failure to have a device, such as a telephone, located near a hazardous waste storage area capable of summoning emergency assistance in violation of 6 NYCRR § 372.2(a)(8)(iii)(e)(2)(i).
9. Failure to post the names and telephone numbers of the emergency coordinators next to the telephone, in violation of 6 NYCRR § 372.2(a)(8)(iii)(e)(2)(i).
10. Failure to post the location of fire extinguishers and spill control material next to the telephone, in violation of 6 NYCRR § 372.2(a)(8)(iii)(e)(2)(ii).
11. Failure to attempt to make arrangements where appropriate to familiarize police, fire departments and emergency response teams with the layout of the facility, properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to and roads inside the facility, and possible evacuation routes in violation of 6 NYCRR § 373-3.3(g)(1)(i).
12. Failure to attempt to make arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses which could result from fires, explosions or releases at the facility. 6 NYCRR § 373-3.3(g)(1)(iv).
13. Failure to ship hazardous waste off-site within 180 days in violation of 6 NYCRR § 372.2(a)(8)(iii).

At the time of the inspection, none of the containers of hazardous waste observed during the inspection, and noted above, were labeled with accumulation start dates. No communication device and postings of emergency responders and of the location of fire extinguishers were observed near the stack of waste enamel paints, "flammable liquid" waste, and of unknown wastes next to the paint trailer used as a hazardous waste storage area; and weekly inspections were not conducted of this area to look for leaking containers and for deterioration of containers caused by corrosion and other factors. Also, at the time of the inspection, you were not able to provide evidence such as copies of correspondence that emergency response teams, and the local hospital, were contacted and that attempts were made to familiarize them with your facility's operations and the properties of the hazardous waste handled by your operations.

## ENCLOSURE II

### RCRA § 3007 INFORMATION REQUEST

American Shoring, Inc.

EPA ID No. NYN 008 028 391

#### QUESTION 1

In regards to the violations cited in the above Notice of Violation (Enclosure I), please provide a description of the actions taken to correct the violations cited in items 1 through 13 and provide documentation, including photographs (where applicable), verifying that each violation has been corrected.

#### QUESTION 2

During the opening conference of the March 16, 2016 inspection, you stated that your facility does not generate any hazardous waste. However, during the inspection, the haphazard storage of about least 30 containers of waste paints, a "flammable liquid" waste, waste lubricants, used hydraulic oil, and unknown wastes, many of which were unlabeled and corroded, and at least two that were open, were observed in several locations in the outdoor lot of your facility.

In order to verify that all solid wastes generated by American Shoring, Inc. were not, and are not, RCRA hazardous waste, please provide the following information.

- a. Please provide a detailed description of each activity conducted at the American Shoring, Inc. facility in Newburgh, New York that generated solid and/or hazardous wastes (as defined in 40 C.F.R. Part 261) during the period March 2013 to March 2016, inclusive;
- b. Please list the solid and/or hazardous wastes generated from each activity, as indicated in response to Question 2(a), above, including but not limited to all *off-spec paints, paint thinners, spent filters, spent solvents or paint thinners, solvent and/or paint contaminated rags, discarded paint rollers, brushes, etc, hydraulic oil, automotive fluids, corrosive wastes (e.g. metal surface cleaners), discarded chemicals, floor sweeping in the manufacturing area, discarded toner and printer inks, off-spec adhesives, off-spec penetrants, used oil, discarded pesticides, waste petroleum products, sludge bottoms from tank cleanings, spent lamps/bulbs, waste batteries, discarded cathode ray tubes (e.g. computer monitors) etc.)* indicating monthly quantities of each waste, in kilograms, generated during the period March 2013 to March 2016, inclusive.
- c. Provide all analytical results and/or documentation used in determining whether each solid waste stated in response to Question 2(b), above, is or is not a hazardous waste. If generator knowledge of the waste(s) was used to determine that the solid waste was not a hazardous waste, please provide a narrative which details the knowledge employed in making each such determination. If MSDS data were used to make hazardous waste/non-hazardous waste determinations, note whether or not it was taken into account that the waste could have been contaminated by other sources from usage.

- d. For each hazardous and each non-hazardous waste described in response to Question 2(b), above, please provide copies of all documentation, including hazardous waste manifests, for the off-site shipment/disposal or treatment of such wastes during the time period March 2013 to March 2016, inclusive. If no such documentation is available, identify each entity (commercial, corporate, or municipal) that received such wastes from your facility, the specific waste that they received, the date(s) each such waste was shipped from your facility, and state the reason(s) for not maintaining such shipping documents at your facility.
- e. For each waste described in response to Question 2(b), above, please specify how each waste was containerized, the location where each container of waste was stored on-site prior to shipment off-site, the length of time each container was stored prior to shipment off-site, and whether or not any of these containers were labeled as hazardous waste during storage.

### QUESTION 3

At the time of the inspection, you stated that the painting of steel shoring boxes are conducted “anywhere” outdoors. During a tour of your facility, evidence of multiple paint spillages on the ground, including along the embankment of Quassaick Creek, were observed in several areas of your facility’s rear lot.

In order to gain an understanding of how such spillages may have occurred, please provide the following information.

- a. Please submit a *detailed* narrative which describes the manner in which steel *and* aluminum shoring boxes are cleaned and/or painted, including their placement on the ground outdoors, the cleaning of metal surfaces with caustics or other cleaners including the manner in which the boxes are cleaned (e.g. by spraying a caustic solution) and painted, (e.g. rolling, spray painting, etc.). Include in your narrative the manufacturer and commercial name of the cleaners, paints, etc. utilized, and the types and quantities of wastes generated in the course of cleaning and/or painting shoring boxes such as discarded brushes, rollers, rags, empty paint, paint thinner, and caustic metal cleaner containers that are typically generated from cleaning and painting operations.
- b. Please submit a detailed narrative which describes the manner in which paint spraying or paint rolling equipment or components, such as nozzles, spray guns, hoses, etc., are cleaned; include in your narrative the manufacturer and commercial name of the solvents used, the quantities of solvents used to conduct these operations, and the manner in which any spent solvents are collected, containerized, stored, and disposed of.
- c. At the time of the inspection, it was observed that at least one of the containers of enamel paint placed in the dumpster used to store discarded containers of paints, paint thinners, rags, rollers, etc., was not empty. Please state the reason why paint containers are not empty prior to being placed in the dumpster for disposal.

- d. Please provide a detailed explanation why there was evidence of multiple releases of paint on ground surface and along the embankment of Quassaick Creek, and how the releases occurred.

#### QUESTION 4

During the opening conference of the inspection, you stated that lighting fixtures and fluorescent lamps were replaced about two years earlier, with the fixtures and spent fluorescent lamps taken off site by the contractor that swapped out the lamps. However, during the tour of your facility, when the inspector requested that three adjacent storage trailers be opened, you stated that the fixtures and lamps were being stored in one of the storage trailers, and you stated "we never throw out anything".

- a. Please provide any and all documentation that shows that your facility had contracted to replace all lighting fixtures and fluorescent lamps at your facility. This information should include the number of fixtures and lamps replaced/swapped, the type of lamps that were removed, e.g. the brand, length, item number, etc, and documents that show that the contractor removed the fixtures and lamps off-site.
- b. If the lamp fixtures and spent lamps remained on site, please provide the number of fixtures and lamps, including the type of lamps, e.g. the brand, length, item number, etc, that remained on site, and state the reason why these had not been shipped off site for disposal or recycling during the two years subsequent to their being removed after the replacement of fixtures.

## ENCLOSURE III

### Instructions and Definitions

In responding to this Request for Information, apply the following instructions and definitions:

1. The signatory should be an officer or agent who is authorized to respond on behalf of the company or facility.
2. A complete response must be made to each individual question in this request for information. Identify each answer with the number of the question to which it is addressed.
3. In preparing your response to each question, consult with all present and former employees and agents of the company or facility who you have reason to believe may be familiar with the matter to which the question pertains.
4. In answering each question, identify all contributing sources of information.
5. If you are unable to answer a question in a detailed and complete manner or if you are unable to provide any of the information or documents requested, indicate the reason for your inability to do so. If you have reason to believe that there is an individual who may be able to provide more detail or documentation in response to any question, state that person's name and last known address and phone number and the reasons for your belief.
6. If you cannot provide a precise answer to any question, please approximate and state the reason for your inability to be specific.
7. For each document produced in response to this Request for Information, indicate on the document or in some other reasonable manner, the number of the question to which it applies.
8. If anything is deleted from a document produced in response to this Request for Information, state the reason for and the subject matter of the deletion.
9. If a document is requested but is not available, state the reason for its unavailability. In addition, identify any such document by author, date, subject matter, number of pages, and all recipients and their addresses.
10. The company and/or facilities for the purposes of this Request for Information is American Shoring, Inc. located at 207 Lake Street (Route 32) in Newburgh, New York..
11. Hazardous waste shall be defined for the purposes of this Request for Information as that term is defined in Section 1004(5) of RCRA, as amended, 42 U.S.C. Part 6903(5) and in 40 C.F.R., Section 261.3.
12. Manage shall be defined for the purposes of this Request for Information as a market, generate, treat, store, dispose or otherwise handle.

13. Standards applicable to transporters of hazardous waste shall be those as established in 40 C.F.R. Part 263.
14. Hazardous constituents shall be defined as those substances listed in 40 C.F.R. Part 261, Appendix VIII.

## **ENCLOSURE IV**

### **Certification of Answers to Responses to Request for Information**

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document (response to EPA Request for Information) and all documents submitted herewith, that the submitted information is true, accurate and complete, and that all documents submitted herewith are complete and authentic, unless otherwise indicated. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

---

NAME (print or type)

---

TITLE (print or type)

---

SIGNATURE

---

DATE